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No. 113

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

HONORABLE BERNARD M. DECKER,
UNITED STATES DISTRICT JUDGE, et al.,
Petitioners,

v.

HARPER & ROW PUBLISHERS, INC., et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPPOSITION TO MOTION OF EDWARD S. IRONS AND MARY HELEN SEARS TO FILE A BRIEF AMICUS CURIAE

H. TEMPLETON BROWN
ROBERT L. STERN
LEE N. ABRAMS
On behalf of respondents.

MAYER, BROWN & PLATT
231 South LaSalle Street
Chicago, Illinois 60604

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

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In view of the public importance of the issue here presented and the motions of the American Bar Association and the New York Bar Associations for leave to file *amicus* briefs supporting respondents' position, respondents are reluctant to object to the filing of an *amicus* brief supporting petitioners—even though petitioners themselves have refused consent to the filing. Respondents nevertheless submit that the motion to file an *amicus* brief, submitted approximately three months later than the time specified in Rule 42(2),* should be denied for the following reasons:

* The petitioners' brief was due and filed on June 18, 1970; any *amicus* brief supporting the petitioners was due at that time. Respondents' brief was filed August 3, 1970, as were the *amicus* briefs filed by the American and New York Bar Associations.

1. Movants have asserted no interest in the issue presented sufficient to warrant their filing of an *amicus* brief. They say they are primarily engaged in "patent, trademark and unfair competition matters" and that "in the course of this practice [they] have from time to time devoted considerable effort, thought and study to the problem" of attorney-client privilege "in these fields of law, especially for corporate clients". In the *Natta* cases, which appear to have been terminated,* they did unsuccessfully contend that the attorney-client privilege (for individuals as well as corporations) should be more strictly limited in patent cases. But that gives them no adequate present interest in the issue in this case, other than the personal interest which any lawyer who has lost a case might have in a subsequent decision on a related question.

2. The proposed *amicus* brief deals with many matters extraneous to the instant case. Its principal contentions are (1) that because corporations are created by a state, corporations should not be accorded any attorney-client privilege (contrary to *Radiant Burners, Inc.* v. *American Gas Association*, 320 F.2d 314 (7th Cir., 1963), cert. den., 375 U.S. 929 (1963)); (2) that corporations should not be granted a privilege broader than that allowed non-corporate clients, which the decision of the Court of Appeals in this

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* *In re Natta*, 410 F.2d 187 (3 Cir., 1969), cert. den. *sub nom. Montecatini Edison S.p.A.* v. *E. I. duPont de Nemours & Co.*, 396 U.S. 836 (1969); *Natta* v. *Hogan*, 392 F.2d 686 (10 Cir., 1968); *Natta* v. *Zletz*, 418 F.2d 633 (7 Cir., 1969). These cases in the Third, Seventh and Tenth Circuits were ancillary proceedings for the discovery of documents for use in a Patent Office interference proceeding, in which the taking of evidence has been concluded. Movants accurately assert that they "recently represented Natta" in those cases. They have since withdrawn as counsel. *Hogan* v. *Zletz*, U.S. Patent Office, Interference No. 89,634, Application to Withdraw as Attorneys, August 27, 1970.

case in no way permits and which no one in this case has ever suggested; and (3) that a narrower privilege or none at all be allowed corporations in patent cases—which this case is not. The proposed brief also contains inaccurate and unsupported statements of fact, such as the assertion that the communications in issue in the instant case were not made in confidence.

3. The proposed *amicus* brief is on its face a reply to the respondents' brief, as well as to the *amicus* briefs which were timely filed at the same time as respondents' brief. Since the proposed *amicus* brief should have been filed at least 30 days *before* those briefs, the movants are taking advantage of their tardiness in preparing and presenting their brief long after the time specified in Rule 42(2).

Respectfully submitted,

H. Templeton Brown
Robert L. Stern
Lee N. Abrams
On behalf of respondents

Of Counsel:

Mayer, Brown & Platt
231 South LaSalle Street
Chicago, Illinois 60604

September 22, 1970